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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/783,540	02/20/2004	John T. Pienkos		7442

7590 03/16/2007
JOHN T. PIENKOS
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GLENDALE, WI 53209

EXAMINER

WEINSTEIN, STEVEN L

ART UNIT	PAPER NUMBER
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1761

SHORTENED STATUTORY PERIOD OF RESPONSE	MAIL DATE	DELIVERY MODE
3 MONTHS	03/16/2007	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

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Office Action Summary	Application No. 10/783,540	Applicant(s) PIENKOS, JOHN T.	
	Examiner Steven L. Weinstein	Art Unit 1761	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 03 January 2007.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) 18-20 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-17 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date <u>1/12/06</u> | 6) <input type="checkbox"/> Other: _____ |

Applicant's response filed 1/3/07, to the Restriction requirement mailed 11/17/06 has been received. Applicant has elected Group I, claims 1-17, without traverse. Accordingly, claims 18-20 have been withdrawn from further consideration as being drawn to a non-elected invention and an action on the merits of claims 1-17 follows.

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1,2,3,5, 8,14 and 15 are rejected under 35 U.S.C. 102(b) as being anticipated by Kienle (DE4120385).

In regard to claim1, Kienle discloses a food product comprising a pocket formed from dough (#1), a portion of a food stuffing material (#2) captured within the pocket and a protrusion (#3) coupled to the pocket, wherein the protrusion is capable of being grasped and, when so grasped, the pocket is capable of being supported by the protrusion. As an example, column 2, para.1 reads: "At one end there is a casing(1) in the form of a corner(3) with no filling over a strand(2) in order to facilitate holding with the hand during consumption". Thus, Kienle teaches both applicant's problem and applicant's solution. That is, Kienle teaches if one desires to hand hold a composite food material (i.e., a food material comprising two or more components or phases), one should provide the food product with an extension or projection of the outer component to form a handle. In regard to claim 2, since Kienle discloses that the projection is to be

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held by the hand, the projection would inherently be sufficiently large to be grasped by at least the recited fingers. In regard to claim 3, Kienle teaches that the protrusion has little, if any, food stuffing material therein. In regard to claim 5, the protrusion of Kienle is integrally formed. In regard to claim 8, Kienle discloses that the dough based covering has an end "at least" at one side, which is unfilled and projects beyond the filling. Thus, Kienle discloses there can be more than one protrusion. Claims 14 and 15 are rejected for the reasons given above.

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 4,6,7 and 11-13 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kienle (DE'385) in view of Woods et al 96,423,357), Potter (3,384,495), Hsieh (2004/0018276), Kojima (D405,936), the Gordon patents, (D195,498), (D194,780), (D193,542), and (D193,541), Seyfert (D309,210), Gansle (D67,885), Hreschak (D212,070), Teras (2002/0132029), Maric (2006/0040020), Odom (2004/0011223) and Burt (1,718,997).

In regard to claim 4, which recites that the surfaces have at least a specific area, since Lienle discloses hand-holding the food product by the protrusion, the particular area for grasping would have been an obvious routine determination, if indded, not already inherent in Kienle. Woods et al, Potter et al, Hsieh, Teras et al, Maric, Kojima, Gordon ('498), Gordon ('780), Gordon ('542), Gordon ('541), Seyfert ('210), Gansle,

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Odom, Hreschak and Burt are all relied on as further evidence that it was notoriously conventional to provide edibles with either integral or attachable, edible handles in the form of all types of projecting members. In regard to claim 6 which recites two layers it is not clear if the protrusion of Kienle is two layers or not. The Office will attempt to obtain a complete translation of Kienle. In any case, although whether the protrusion is two layers or not is a function of how it is made, and not seen to have patentable significance in the final product. The art taken as a whole teaches the conventionality of protrusions made from two layers as evidenced, e.g., by Hreschak. To modify Kienle, if necessary, and employ two layers would therefore have been obvious. In regard to claim 7, as noted above, Kienle discloses cooking the protrusion. In regard to claims 11 and 12, to provide a "food structure" (whatever that means) to extend beyond the rim is readable on the dough protrusion itself. In any case, the art taken as a whole discloses edible or inedible, or edible/inedible combinations, as projections for hand-holding, and to therefore modify Kienle for its art recognized and applicant's intended function would therefore have been obvious. In regard to claim 13, the particular conventional composite food product employed is seen to have been an obvious matter of choice.

Claims 9, 10, 16, and 17 are rejected under 35 USC 103(a) in view of the references applied above in regard to claims 4, 6, 7 further in view of Kaufman (3,331,626).

Claim 9 recites that the protrusion is capable of being grasped by a clip and claim 10 positively recites the clip. In regard to claim 9, the protrusion of Kaufman would appear to be capable of being grasped by some sized clip. In any case, as evidenced

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by Kaufman, it was conventional in the art to employ a flexible, plastic holder (i.e., a clip), which is capable of grasping a food product to be held, and is also capable of being grasped by the thumb and index finger, so that the hand does not directly touch the food and get soiled. To modify the combination and provide a structure, which would allow one to hold the protrusion without directly touching the protrusion, would therefore have been obvious. Claims 16 and 17 are rejected for the reasons given above.

The remainder of the references cited on the PTO892 form are cited as pertinent art.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Steven L. Weinstein whose telephone number is 571-272-1410. The examiner can normally be reached on Monday-Friday 7:00 A.M.-2:30 P.M..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Milton Cano can be reached on 571-272-1398. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Steve Weinstein
STEVE WEINSTEIN
PRIMARY EXAMINER
1761
3/15/07